



## **FACTUAL HISTORY**

On October 26, 1979 appellant, then a 29-year-old temporary carpenter, was injured when he was lifting a sheet of drywall. OWCP accepted the claim for lumbosacral strain. Appellant stopped work on December 13, 1979, returned on January 4, 1980, stopped again on March 2, 1980 and returned again on April 14, 1980. He was separated from his job on June 20, 1980 and did not return.<sup>3</sup> Appellant received wage-loss compensation.

From March 16, 1982 to June 24, 1992, appellant was treated by Dr. Denis R. Harris, a Board-certified orthopedic surgeon, for low back pain related to injuries sustained at work on June 19, 1978 and October 26, 1979. Dr. Harris diagnosed sciatica, spondylolisthesis and ruptured disc causally related to the work injury of October 26, 1979. Appellant was also treated by Dr. Alvaro A. Sanchez, a Board-certified orthopedist, from September 23, 1981 to August 22, 1983, for low back pain subsequent to the work injury in 1979. Dr. Sanchez diagnosed spondylolysis at L5-S1. Appellant was referred for vocational rehabilitation in 1988 and obtained a certificate in computer technology from a community college but did not return to work.

Appellant came under the treatment of Dr. Mark H. Henderson, Jr., a Board-certified orthopedist, on April 4, 2006, who noted a history of appellant's 1979 work injury. Examination revealed normal range of motion of the back, negative impingement sign and normal reflexes, sensation and strength. X-rays showed spondylosis and a small herniated disc at L4-5. Dr. Henderson diagnosed chronic disability with sciatica, lumbar spondylosis and petit mal seizure. He opined that because of appellant's age and seizure disorder it was unlikely he could be gainfully employed and was totally disabled.

OWCP referred appellant to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion. In a June 25, 2009 report, Dr. Hanley noted the history of the 1978 and 1979 injuries. He advised that examination revealed a normal gait, no limp, no evidence of scoliosis or spasm and no neurological compromise. Dr. Hanley diagnosed history of musculoligamentous straining injury to the lumbar spine. He noted that appellant had a lumbosacral strain 30 years prior that resolved and did not lead to long-term disability. Dr. Hanley stated that a review of the record suggested that appellant could perform his work duties after the injury. Appellant no longer had residuals of his work injury and was at maximum medical improvement. Dr. Hanley indicated that appellant had not been treated by a physician regularly since the 1980's or require additional treatment. He opined that appellant's current condition was related to 30 years of bodily neglect, petit mal epilepsy and fractures to the femur and tibia which combined to make appellant unfit for duty and unemployable. Dr. Hanley noted no objective factors of disability were directly related to the accepted industrial accidents nor were the subjective complaints related to his work injury. He found that the work injury of 1979 was no longer a disabling factor and there were no restrictions on his activity as a consequence of the injury. Dr. Hanley noted that appellant was capable of returning to his prior

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<sup>3</sup> On June 19, 1978 appellant sustained a traumatic injury when he was thrown from a truck and OWCP accepted lumbosacral myoligamentous strain in connection with the incident, File No. xxxxxx378. OWCP consolidated this case with the current claim before the Board.

occupation as a carpenter. He opined that appellant was unemployable for reasons other than his industrial injury and recommended vocational rehabilitation.

On September 4, 2009 OWCP issued a notice of proposed termination of compensation benefits based on Dr. Hanley's report.

Appellant submitted letters dated September 17 to 25, 2009, and disputed the proposed termination of compensation asserting that OWCP's referral physician did not perform a medical examination, a procedure or test before rendering an opinion. He indicated that Dr. Hanley merely provided an opinion based on the review of his medical file. Appellant contended that Dr. Hanley was biased and not competent to render an opinion on his disability and his benefits should not be terminated based on his report. He asserted that evidence from his treating physician, Dr. Henderson, confirmed that he had residuals of his work injury. Appellant submitted an April 4, 2006 report from Dr. Henderson, previously of record.

By decision dated June 28, 2010, OWCP terminated appellant's compensation benefits effective August 1, 2010. It found that Dr. Hanley's report represented the weight of the medical evidence and established that he had no continuing residuals of his accepted injuries.

On July 27, 2010 appellant requested a review of the written record. He submitted letters to his representatives dated July 13 to August 16, 2010 disputing the findings of Dr. Hanley. Appellant submitted reports dated January 14 to May 7, 1981 from Dr. Saad Kassen, a Board-certified orthopedist, who treated appellant for back pain and radiculopathy. Also submitted were reports from Dr. Sanchez dated September 21, 1981 to August 22, 1983 and Dr. Harris dated August 25, 1983 to June 9, 1994, who treated appellant for his work-related back injury and diagnosed spondylolysis at L5-S1 related to his 1979 employment injury. Reports dated March 8 to June 10, 1993 from Dr. Keith Segalman, a Board-certified orthopedist, noted appellant's treatment for a hand injury. A June 11, 1993 report from Dr. Edward Rabbitt, a Board-certified internist, noted that appellant could return to work full time with restrictions. Appellant submitted a June 21, 2010 report from Dr. Henderson who noted seeing appellant that date after previously evaluating him in 2006 when he was considered permanently disabled. Dr. Henderson noted that appellant stopped driving 15 years prior. He opined that, given appellant's age of 60, long-term disability and susceptibility to seizures which were not treatable, appellant was not a candidate for rehabilitation but was totally disabled.

In a decision dated August 17, 2010, OWCP denied appellant's request for a review of the written record as not timely filed.

In a letter dated August 31, 2010, appellant asserted that he timely filed his request for a review of the written record and provided a certified mail receipt. He submitted Dr. Henderson's April 4, 2006 and June 21, 2010 reports, previously of record. Appellant also submitted a correspondence to his congressional representatives and an Equal Employment Opportunity (EEO) decision, finding that he was unlawfully discriminated against based on race when he was separated from employment on June 20, 1980.

In a decision dated December 14, 2010, OWCP vacated the August 17, 2010 decision finding that appellant's request for a review of the written record was timely filed.

In a decision dated March 14, 2011, an OWCP hearing representative affirmed the June 28, 2010 OWCP decision.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>4</sup> After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>6</sup>

### **ANALYSIS**

OWCP accepted appellant's claim for a lumbar strain and also for a lumbosacral myoligamentous strain. On June 3, 2009 OWCP referred appellant for a second opinion evaluation to Dr. Hanley, an orthopedist. In his report dated June 25, 2009, Dr. Hanley noted an essentially normal physical examination and diagnosed history of musculoligamentous straining injury to the lumbar spine. He noted that appellant sustained a lumbosacral strain 30 years ago which resolved and did not lead to long-term disability. Dr. Hanley opined that appellant no longer had residuals of this injury and was a maximum medical improvement and required no additional treatment for his work injury. He noted that the work injury of 1979 was no longer disabling factor and there were no restrictions on his activity as a consequence of the injury and appellant was capable of returning to his prior occupation as a carpenter. Dr. Hanley opined that appellant's current condition was related to 30 years of bodily neglect, petit mal epilepsy and fractures to the femur and tibia which combine to make appellant unfit for duty and unemployable at this time unrelated to his industrial injury. He found no basis on which to attribute any continuing condition or disability to the accepted injuries.

Thereafter, appellant submitted an April 4, 2006 report from Dr. Henderson, who noted an essentially normal examination and diagnosed chronic disability with sciatica, lumbar spondylosis and petit mal seizure. Dr. Henderson opined that because of appellant's age and seizure disorder it was unlikely he could be gainfully employed and was totally disabled. Similarly, in a June 21, 2010 report, he opined that given appellant's age, long-term disability and susceptibility to seizures, appellant was not a candidate for rehabilitation, but was totally disabled. However, none of Dr. Henderson's reports specifically provide new medical reasoning to explain how any continuing condition or disability was causally related to the 1978 and 1979 accepted low back sprains. Rather, he opined that appellant's disability was related to his age and seizure disorder which were not work related.

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<sup>4</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>5</sup> *Mary A. Lowe*, 52 ECAB 223 (2001).

<sup>6</sup> *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

Other medical reports from Dr. Kassen dated January 14 to May 7, 1981, Dr. Sanchez dated September 21, 1981 to August 22, 1983, and Dr. Harris dated August 25, 1983 to June 9, 1994, Dr. Keith Segalman, a Board-certified orthopedist, dated March 8 to June 10, 1993, and Dr. Rabbitt dated June 11, 1993, significantly predate the termination of benefits and consequently fail to address whether any continuing condition or disability was causally related to the October 26, 1979 work injury.

The Board finds that the opinion of Dr. Hanley represents the weight of the evidence and establishes that appellant's work-related conditions have resolved. Dr. Hanley indicated that appellant did not have residuals from the condition of lumbar strain and had no restrictions due to the work injury, rather, indicated that appellant was disabled due to conditions unrelated to his industrial injury. There is no contemporaneous medical evidence of equal weight supporting appellant's claim for continuing disability and medical residuals.

For these reasons, OWCP met its burden of proof in terminating appellant's benefits for his accepted conditions.

On appeal appellant disagreed with the findings of the second opinion physician and asserted that he was permanently disabled from work due to his accepted lumbar strain. He indicated that Dr. Henderson's reports supported his claim but were not properly considered by OWCP. The Board notes that in order for OWCP to terminate benefits it must establish that a claimant no longer has residuals of an employment-related condition, which required further medical treatment. As noted above, appellant's treating physician, Dr. Henderson, did not specifically provide new medical reasoning to explain how any continuing condition or disability was causally related to the accepted work injuries that involved low back sprains. Rather, he opined that appellant's disability was related to his age and seizure disorder and not to his work-related lumbar condition. OWCP subsequently referred appellant to Dr. Hanley, a referral physician, who found that appellant's work-related lumbar sprain had resolved. There is no medical evidence contemporaneous with the termination of benefits which supports that appellant has continuing residuals or disability due to the accepted low back sprains. OWCP met its burden of proof to terminate benefits.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.<sup>7</sup>

### **CONCLUSION**

The Board finds that OWCP has met its burden of proof to terminate benefits effective August 1, 2010.

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<sup>7</sup> Appellant requested oral argument before the Board which was scheduled for March 1, 2012. However, he did not appear for the scheduled oral argument.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 14, 2011 is affirmed.

Issued: May 14, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board